

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into between the State of California acting through the California Department of Insurance and the California Insurance Commissioner (collectively, “California” or “State of California”) and Olympus Corporation of the Americas (“Olympus”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### I. RECITALS

- A. Olympus is a New York corporation with its principal place of business in Center Valley, Pennsylvania. At all relevant times, Olympus distributed, sold, marketed, and serviced medical optics and imaging equipment, including endoscopes, ultrasound systems, and clinical microscopes in the State of California, including the TJF-Q180V duodenoscope.
- B. On August 9, 2016, the Parties entered into a tolling agreement. The tolling agreement has been extended by the Parties by mutual agreement and the current tolling agreement is set to expire on January 16, 2018.
- C. On August 31, 2016, the Commissioner served an investigative subpoena on Olympus’ counsel of record captioned *In the Matter of Investigation No. LO-2016-00023; And Related Matters*.
- D. The California Insurance Commissioner alleges that he has certain civil claims against Olympus arising from the following conduct (hereinafter referred to as the “Covered Conduct”):
  - a. The Commissioner contends that Olympus provided kickbacks to physicians and to hospital employees and representatives, in violation of the California Insurance Frauds Prevention Act, California Insurance Code section 1871.7 *et seq.*, (“CIFPA”) in order to induce them to purchase Olympus endoscopes and

other Olympus medical and surgical equipment, and to utilize maintenance and servicing contracts with Olympus. The Commissioner contends that these kickbacks took the form of grants, payments for travel and recreational activities, consulting payments, and gifts or no-charge loans of Olympus equipment.

- b. The Commissioner further contends that Olympus violated CIFPA in connection with the sale and marketing of the TJF-Q180V duodenoscope. For example, the Commissioner alleges that Olympus failed to obtain proper approvals for modifications made to the TJF-Q180V and relatedly failed to disclose an alleged defect in its closed-channel duodenoscopes.

E. Except for the facts Olympus specifically admitted in the Statement of Facts appended as Attachment A to the Deferred Prosecution Agreement that Olympus entered into with the United States Attorney's Office for the District of New Jersey on February 29, 2016, Olympus denies any and all wrongdoing alleged by the State of California and denies that it has any liability relating to the Covered Conduct.

## **II. TERMS AND CONDITIONS**

1. Olympus agrees to pay the sum of \$1,075,000.00 (one million and seventy-five thousand dollars) (the "Settlement Amount"), to be distributed as follows: by electronic funds transfer in the amount of \$1,075,000.00 (one million and seventy-five thousand dollars) to the California Department of Insurance within ten (10) business days of the Effective Date of this Agreement pursuant to written instructions to be provided by the California Department of Insurance.

2. Conditioned upon Olympus' payment in full of the Settlement Amount, the Insurance Commissioner acting for the State of California, and for its agencies, employees, servants, and agents, hereby fully and finally releases, acquits, covenants not to sue, and forever discharges Olympus, its current and former direct and indirect parent corporations and limited liability companies ("Parents"); its and their affiliates, direct and indirect subsidiaries, brother and sister corporations, and divisions; its and their respective current and former corporate owners; the predecessors, successors, transferees, and assigns of any of them; and Olympus' past, present and future owners, shareholders, officers, directors, supervisors, members, managers, employees, agents, attorneys and representatives (collectively, "the Olympus entities") for all time and to the fullest extent allowed by law, from any and all suits, arbitrations, claims, demands, investigations, actions, rights, obligations, limitations, claims for relief, charges, causes of actions, and damages and judgments of any kind, character, or nature whatsoever that the California Insurance Commissioner has standing to bring or may now have or claim to have against the Olympus entities, arising in any way out of or connected in any way with the facts, claims and circumstances alleged in, arising under, or arising from the allegations in the Covered Conduct, whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such different or additional facts, in law or in equity, or in contract or tort, including but not limited to any and all penalties, fines, assessments, trebling, disgorgements, overcharges, costs, fees, expenses, or general or special damages of any kind or nature. This release includes, but is not limited to, any claims that could be brought by any party under the CIFPA.

3. Olympus fully and finally releases, waives and discharges the State of California from any and all suits, claims, demands, actions, rights, obligations, limitations, claims for relief, causes of actions, and damages of any kind that the Olympus has standing to bring or may now have or claim to have against the State of California arising in any way out of or connected with the State of California's investigation of the Covered Conduct.

4. This Agreement is made in compromise of disputed claims. This Agreement is neither an admission of facts nor liability by the Olympus entities nor a concession by the California Insurance Commissioner that their claims are not well founded. Except as specified in the February 2016 Deferred Prosecution Agreement entered into with the United States, Olympus expressly denies the allegations set forth in the Covered Conduct and denies any engagement in any wrongful conduct. Neither this agreement, its execution, nor the performance of any obligation under it, including any payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability or wrongdoing, or other expression reflecting upon the merits of the dispute by the Olympus entities.

5. The releases in Paragraphs 2 and 3 above are referred to herein as the "Released Claims." The Parties have conducted their own due diligence regarding their respective Released Claims and all matters relating to their respective Released Claims. This Agreement is expressly intended to release known and unknown claims, including all past, present, and future rights of action arising out of the Released Claims, and to the extent it applies, the Parties expressly waive application of Section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of

executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6. The Parties agree that the Settlement Amount is inclusive of any and all attorneys' fees and/or costs recoverable by the State of California or the California Insurance Commissioner pursuant to California Insurance Code section 1871.7 or any other rule, regulation, or statute.

7. This Agreement hereby fully incorporates by reference the Confidentiality Agreement in this matter, which was entered into by the Parties on April 12, 2017. The Confidentiality Agreement shall apply to all settlement negotiations and discussions, including but not limited to, all negotiations, discussions, communications, and correspondence between the Parties relating to the Settlement Amount and the methodology used to reach the Settlement Amount. For the avoidance of doubt, nothing shall prevent the State from publicly communicating the fact of the Settlement Agreement, the Parties involved, the Settlement Amount, and the essential terms of the Settlement Agreement.

8. Each Party to this Agreement warrants, represents and agrees that such Party has the authority, capacity and is legally competent to execute this Agreement and has the authority to bind each Party to the representations, terms, conditions and covenants set forth herein.

9. This Agreement constitutes the entire agreement of the Parties as to any claims arising out of the Covered Conduct and the Released Claims. This Agreement may not be modified or amended except by a written agreement signed by all of the Parties hereto.

10. This Agreement shall be deemed to have been drafted equally by all Parties hereto. Accordingly, the Parties agree that any and all rules of construction to the effect that any

ambiguity is to be construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

11. If any provision of this Agreement is for any reason held to be invalid or unenforceable, the remainder of this Agreement shall remain and be valid and fully enforceable.

12. This Agreement shall be binding and is binding upon each Party's respective successors, assigns, parent and subsidiary companies, agents, attorneys, and representatives to the extent allowable by law.

13. Copies of signatures transmitted by facsimile or electronically shall constitute acceptable, binding signatures for purposes of this Agreement.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. This Agreement is effective on the date of signature and transmittal to the other Party of the last signatory of the Agreement ("The Effective Date of Agreement").

IN WITNESS WHEREOF, the Parties have executed this Agreement as noted below.

**STATE OF CALIFORNIA**

DAVE JONES, Commissioner of the  
California Department of Insurance

DATED: 11/1/2017

BY: 



MICHAEL LEVY

Deputy General Counsel

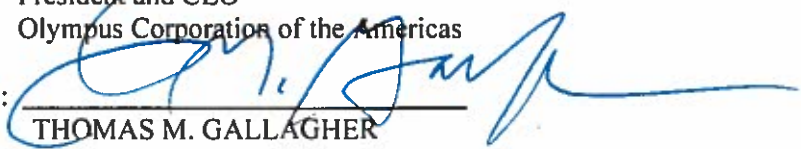
On behalf of the CALIFORNIA DEPARTMENT OF  
INSURANCE and the STATE OF CALIFORNIA

**OLYMPUS CORPORATION FOR THE AMERICAS**

DATED: 11/2/2017 | 6:02 PM EDT

DocuSigned by:  
  
BY:   
NACHO ABIA  
President and CEO  
Olympus Corporation of the Americas

DATED: 11/3/2017

BY:   
THOMAS M. GALLAGHER  
KRISTIN H. JONES  
Pepper Hamilton LLP  
Counsel for Olympus Corporation for the Americas